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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

CHERYL O. CHARLES, Plaintiff,	)	
v.	)	No. 00-2669 Ml/V
WILLIAM HENDERSON, Postmaster General, United States Postal Service, Defendant.	)	

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN PART AND DENYING IN PART

Before the Court is Defendant's Motion for Summary Judgment, filed December 13, 2002. Plaintiff responded on January 15, 2003. Plaintiff alleges that Defendant Memphis Post Office discriminated against her based on her race, religion, sex, age, disability, and color in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e ("Title VII"). Plaintiff also alleges a retaliation claim under Title VII. For the reasons listed below, the Court GRANTS Defendant's motion for summary judgment on all issues except one.

Statement of facts

This case is the consolidation of two cases filed in this

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85

Court. Plaintiff alleges four underlying administrative complaints of discrimination, the facts of which will be discussed in turn.

The Court summarizes Plaintiff's first claim as the denial of the opportunity of a detail in the Chicago Post Office. Plaintiff, a Catholic black female over age 40, began her career with the United States Postal Service in 1970 in Los Angeles, California. In 1990, she transferred to the Memphis Post Office. Plaintiff was employed as a level EAS-16 distribution supervisor in at the Hickory Hill Post Office in Memphis in 1997. In August, 1997, Plaintiff went to Chicago to interview for a position in the Chicago Post Office and was offered a detail to a level EAS-22 position, but asserts she was denied the opportunity by management in Memphis. On the day of the interview, Plaintiff phoned the Memphis Post Office to inquire about the possibility of her taking the detail in Chicago. Silvester Owens, area manager, was acting Postmaster on that day. Owens informed Plaintiff that her application for the detail to Chicago had not been approved. Plaintiff alleges that during that same conversation Owens told her she "was not wanted in Memphis". Wilhelmenia Bonds, the Postmaster of the Memphis Post Office, stated in her deposition that she was the individual that made the decision not to approve the request for the detail in Chicago. Following that telephone conversation with Owens, Plaintiff did not return to work until January 1998. Plaintiff alleges that in denying her the opportunity in Chicago, Defendant discriminated against her based on her religion, sex and age. Plaintiff also sets forth a retaliation claim. Plaintiff previously filed a complaint with the Equal Employment Opportunity Commission against Defendant on July 1, 1996. That complaint named Terry Green and J. Nutall as the persons who took the actions she alleged were discriminatory.

Next, Plaintiff contends that in changing her duty assignments upon Plaintiff's return to work, Defendant discriminated against her based on religion, sex, age and retaliation. Upon her return to work, Plaintiff was assigned to the Bartlett Post Office. In February 1998, Plaintiff was informed by her manager, L.T. Blair, that she was scheduled to return to the Hickory Hill Post Office where she had previously worked, but would not be placed in the position she had been in prior to her absence. Blair told her that this change in assignment was due to the fact that her prior position had been eliminated during her absence. Blair assigned her to a position as a supervisor in Finance Operation. At some point after she began the new job, Plaintiff informed Blair of her medical restrictions and submitted that she had difficulty with the new assignment in Finance. In response, Blair suggested that she might want to consider applying for light duty assignments.

Plaintiff's next allegation of impermissible discrimination concerns events surrounding her alleged injury that Plaintiff contends took place on April 15, 1998. On that date, Plaintiff attended training at the White Station Post Office. When she arrived at that facility, Plaintiff told the other supervisors in attendance that she was prone to blackouts and, in the event that one should occur, they were to call 911. That same day, Plaintiff allegedly suffered a panic attack, fell, and hit her head. After the alleged injury, Plaintiff phoned 911 herself. She was taken by ambulance to St. Francis Hospital. The next morning, Plaintiff called the Injury Compensation Office and reported that she needed to file an accident report because she had fallen at the White Station Post Office the previous day and hit her head.

On May 21, 1998, Defendant issued Plaintiff a Notice Of Proposed Removal for falsification of Form CA-A, Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation, and a violation of the Standards of Conduct of the Employee and Labor Relations Manual. Plaintiff contends that the Defendant's issuance of this notice constituted impermissible discrimination based on religion, race, sex, and retaliation.

Last, Plaintiff alleges that the Defendant discriminated against her in failing to award her a bonus through the Economic Value Added Variable Pay Program ("EVA bonus"), an incentive bonus plan for supervisors. Plaintiff did not receive an incentive bonus for 1998. Plaintiff contends that the Defendant's denial of the EVA bonus was impermissible discrimination based on race, color, religion, sex, age, mental disability and retaliation.

Plaintiff has not worked for the Postal Service since November 6, 1998. She applied for, and currently receives, disability retirement benefits.

Summary Judgment Standard

Under Federal Rule of Civil Procedure 56(c), summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). So long as the movant has met its initial burden of "demonstrat[ing] the absence of a genuine issue of material fact," Celotex, 477 U.S. at 323, and the nonmoving party is unable to make such a showing, summary judgment is appropriate, Emmons v. McLaughlin, 874 F.2d 351, 353 (6th Cir. 1989). In considering a motion for summary judgment, "the evidence as well as all inferences drawn therefrom must be read in a light most favorable to the party opposing the motion." Kochins v. Linden-Alimak, Inc., 799 F.2d 1128, 1133 (6th Cir. 1986); see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

When confronted with a properly-supported motion for summary judgment, the nonmoving party "must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P.

56(e); see also Abeita v. TransAmerica Mailings, Inc., 159 F.3d 246, 250 (6th Cir. 1998). A genuine issue of material fact exists for trial "if the evidence [presented by the nonmoving party] is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In essence, the inquiry is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Id. at 251-52.

Title VII

Title VII states, in relevant part:

> It shall be an unlawful employment practice for an employer-
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin . . . .

42 U.S.C. § 2000e-2(a)(1). In the absence of direct evidence of discrimination, Title VII claims are analyzed under the shifting burden analysis set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), and as refined in Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). Under that analysis, a plaintiff must first prove, by a preponderance of the evidence, a prima facie case of discrimination. See Burdine, 450 U.S. at 252.

Establishment of the prima facie case creates a rebuttable presumption that the employer engaged in unlawful discrimination. See Hicks, 509 U.S. at 506. If the plaintiff meets this burden, the burden then shifts to the defendant to produce a legitimate, non-discriminatory reason for the adverse employment action. See id. at 252-53. If the defendant meets this burden, the burden then shifts back to the plaintiff to show that the reasons offered by the defendant are a pretext for discrimination. See id. at 253. Throughout this analysis, the ultimate burden of proving the intent to discriminate, by a preponderance of the evidence, always remains with the plaintiff. See St. Mary's Honor Center v. Hicks, 509 U.S. 502, 511 (1993).

Discussion

Plaintiff alleges Defendant wrongly discriminated against her in four different contexts: (1) denying her the opportunity for detail in Chicago; (2) changing her duty assignments upon her return to work; (3) issuing her the notice of removal; and (4) denying her an EVA bonus. These four allegations will be discussed in turn.

Detail to Chicago

Plaintiff alleges that Defendant wrongly discriminated against her on the basis of religion, sex, and age in denying her application for a detail in Chicago. Plaintiff has also filed a claim based on retaliation. It is undisputed that Plaintiff is a Catholic black female over the age of 40, and thus a member of several protected classes under Title VII. The parties do not dispute that Plaintiff suffered an adverse employment action: the denial of the detail in Chicago. Defendants, however, contest that the circumstances surrounding the adverse employment action rationally support the inference that the adverse employment action was motivated by unlawful considerations. Plaintiff did not respond to the Defendant's motion for summary judgment on the denial of the Chicago detail.

Ms. Bonds, the Postmaster who made the decision not to approve Plaintiff's detail to Chicago, stated in her deposition that she did not even know that Plaintiff was Catholic. In fact, Plaintiff's only support for discrimination based on religion is the fact that Mr. Owens is a Protestant minister. She alleges that "he forced people to attend church if they wanted to advance." Plaintiff has offered no evidence in support of that allegation.

Plaintiff also alleges discrimination based on sex, but merely asserts that she was the victim of sex discrimination because Owens let males go on details. To establish a prima facie case of gender discrimination, a plaintiff must show: (1) that she is a member of a protected class; (2) that she was satisfactorily performing her job; (3) she suffered an adverse employment decision; and, (4) she was replaced by a male. See Mills v. Ford Motor Co., 800 F.2d 635, 638-39 (6th Cir. 1986). The only evidence that Plaintiff offers to satisfy the fourth requirement is her argument that Sidney Poole, a white male, was given a detail out of town when she was denied the detail to Chicago. The Court finds that this is not a valid comparison because the circumstances surrounding the detail differ significantly. Poole was a station manager and was sent on a detail to Florida that was no more than two levels higher than the position he was in prior to the detail. Plaintiff, on the other hand, was seeking a detail to a position in Chicago that was six levels higher than her current position.

Additionally, Plaintiff has offered no evidence to support her allegations of race and age discrimination other than asserting that Owens preferred to promote young women. Plaintiff's broad assertions of discrimination based on religion, sex, age and race are insufficient to support a prima facie case of discrimination.

The Court also notes that both Owens and Bonds are over forty and black. Defendant asserts that Ms. Bonds, the individual that denied her the opportunity for the detail in Chicago, was familiar with Plaintiff's work and stated in her deposition that she considered Plaintiff unqualified for the detail. Ms. Bonds stated further that she was familiar with the job in Chicago and did not believe the Plaintiff had the necessary training or experience for the higher position.

Considering the materials submitted in support of summary judgment, the Court finds that the surrounding circumstances do not support an inference that Defendant's denied Plaintiff the opportunity in Chicago based on unlawful considerations of race, religion, sex or age. Accordingly, Plaintiff has not set forth a prima facie case of discrimination on the basis of race, sex, age, or religion.

Plaintiff also alleges that Defendant denied her the denial of the opportunity for a Chicago detail in retaliation for a prior EEO complaint, filed on July 1, 1996.

Title VII prohibits retaliation against an employee "because he has opposed any practice made an unlawful employment practice . . . or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing," in connection with an unlawful employment practice. See 42 U.S.C. §2000e-3(a). Claims for retaliation under Title VII are subject to the same analytical framework as claims for discrimination under Title VII. See Wren v. Gould, 808 F.2d 493, 500-02 (6th Cir. 1987) (applying McDonnell Douglas/Burdine shifting burden analysis to retaliation claim).

To establish a prima facie case of retaliation, a plaintiff must show: (1) that plaintiff engaged in an activity protected by

Title VII; (2) that the exercise of his civil rights was known by defendant; (3) that, thereafter, the defendant took an employment action adverse to the plaintiff; and (4) that there was a causal connection between the protected activity and the adverse employment action. See Hollins v. Atlantic Co., 188 F.3d 652, 661 (6th Cir. 1999). Establishment of the prima facie case creates a rebuttable presumption that the employer engaged in unlawful retaliation. See Hicks, 509 U.S. at 506.

Defendant concedes that Plaintiff did engage in prior activity and suffered an adverse action. Defendant contends, however, and the Court agrees, that Plaintiff has presented no evidence in support of element four: a causal connection between the protected activity and the adverse employment action or that Defendant even knew of the prior activity. There is nothing in the record to suggest that Bonds or Owens were aware of the 1996 complaint. That complaint concerned Plaintiff's non-selection to a quality specialist position and did not involve either Bonds or Owens. Plaintiff admits that she did not have any conversation with Owens concerning the prior EEO complaint. (Plaintiff's dep. pp. 46-48.) Owens has also stated that he was not aware of Plaintiff's prior EEO complaint. (Exh. B to Def. Mot. for Summ. J.)

Accordingly, the Court finds that Plaintiff has failed to set forth a prima facie case of retaliation.

Duty Assignments

Plaintiff alleges that she was told by the station manager that she was to report to Hickory Hill Station despite her medical limitations, her request to assume her regular position was denied, she was instructed to request light duty, and her duty assignments and hours were changed. Again, Plaintiff alleges race, religion, sex, and age discrimination and retaliation. Plaintiff also alleges discrimination based on color (dark brown).

The Court finds that Plaintiff has failed to identify an adverse action sufficient to make out a prima facie case. The Sixth Circuit defines "adverse employment action" as a "materially adverse change in terms and conditions of employment." Hollins v. Atlantic Co., 188 F.3d 652, 662 (6th Cir. 1999). Moreover, the Sixth Circuit has held that reassignments without changes in salary, benefits, title or work hours usually do not constitute adverse employment actions. Kocsis v. Multi-Care Mgmt., 97 F.3d 876, 885 (6th Cir. 1996); Yates v. Avco Corp., 819 F.2d 630, 638 (6th Cir. 1987).

In February, 1998, Plaintiff was assigned to a position as a supervisor in Finance Operation. Plaintiff's previous position was a supervisor in Distribution. The change in duty assignment did not result in a reduction in pay or status; Plaintiff remained a supervisor in her new position in Finance. Plaintiff acknowledges that supervisors could be moved around. (Pl. Dep. at 90.)

Furthermore, the individual that was in Plaintiff's previous supervisor position in distribution was a part-time flexible employee. Plaintiff's former position in distribution was no longer a permanent position at the time she decided to return, hence, Defendant assigned her to a position in finance, thereby keeping her in the employ of the Memphis Post Office.

Also, it is clear to the Court that a suggestion to file a request for light duty is not an adverse action sufficient to put forth a prima facie case of discrimination. Blair made that suggestion after Plaintiff complained of her inability to perform her job. Plaintiff admits that light duty is available for employees when they are injured in some manner and cannot perform the full range of their duties. (Pl. Dep. at 111-112.) Accordingly, the Court finds that Plaintiff cannot make out a prima facie case regarding her discrimination claim surrounding the change in duty assignments or Blair's suggestion that she apply for light duty assignments.

Notice of Removal

In its motion for summary judgment, Defendant concedes that Plaintiff can put forth a prima facie case regarding the notice of removal. Once Plaintiff has established the elements of a prima facie case, a presumption of unlawful discrimination arises, which

Defendant may rebut by producing evidence of a legitimate, non-discriminatory reason for taking the adverse employment action. See Hicks, 509 U.S. at 506-07.

After the alleged incident during training, Defendant avers that it conducted an investigation and concluded that Plaintiff falsified Form CA-A in terms of physical injury. Defendant reached this conclusion after consulting with St. Francis Hospital, which had no records of her hitting her head. Defendant also interviewed several of Plaintiff's coworkers, all of whom denied that Plaintiff ever discussed with them her injuries resulting from the fall. The Court finds that Defendant has met its burden of demonstrating a legitimate, business reason.

Once the Defendant has met this burden of production, the presumption created by the prima facie case is rebutted, and the burden shifts back to the plaintiff to show that the proffered justifications are pretexts for unlawful discrimination. Burdine, 450 U.S. at 252-53. To survive summary judgment, plaintiff must produce evidence that would permit the fact-finder to conclude that Defendant's justifications are pretextual. See Warfield v. Lebanon Correctional Institute 181 F.3d 723, 730-31 (6th Cir. 1999).

To prove pretext, a plaintiff may show either: (1) that defendant's reasons had no basis in fact; (2) that the proffered reason did not actually motivate the discharge; or (3) that the reasons were insufficient to motivate discharge. See Manzer v. Diamond Shamrock, 29 F.3d 1078, 1084 (6th Cir. 1994).

To show pretext, Plaintiff cites records from her doctor, Dr. Lewis Loskovitz, who examined her after the alleged incident to prove that she did indeed suffer an injury while at White Station Post Office. These records show that Dr. Loskovitz diagnosed Plaintiff as suffering from a mild concussion. Plaintiff also asserts that she visited Dr. Loskovitz again on April 17 for additional treatment for those claims. Plaintiff submitted a letter from her treating physician to Defendant substantiating her claim for injury. (Pl. Resp. to Def. Mot. for Summ. J., Exh. F.) Plaintiff also submits that the U.S. Department of Labor, Office of Workers Compensation Programs has accepted Dr. Loskovitz' determination that the injury occurred.

While there may be some dispute as to whether or not Plaintiff did indeed fabricate her claim and whether she did suffer injury while at White Station Post Office, that issue is not before the Court. What is at issue is whether or not the issuance of the report was based on discriminatory unlawful motives. The Court finds that Plaintiff has satisfied her burden of creating a genuine issue of material fact as to whether Defendant's proffered reason for the issuance of the report was pretextual. The Court, therefore, denies summary judgment on this issue of whether

Defendant impermissibly discriminated against Plaintiff in issuing her a notice of removal.

Denial of bonus

Defendant agrees that Plaintiff is able to make out a prima facie case of discrimination regarding the denial of the EVA bonus. However, defendant has put forth a legitimate, non-discriminatory reason for its failure to grant Plaintiff a bonus. At the time Defendant evaluated its employees to determine who would receive a bonus, Defendant had already issued Plaintiff a notice of proposed removal for falsification of a government record. Plaintiff's station manager, L.T. Blair, stated in his affidavit that Plaintiff did not receive an award because she had received a Notice of Proposed Removal. Plaintiff has not put forth any evidence showing that this reason was a pretext for illegal discrimination. Again, the issue in this case is not whether Defendant was correct in its decision not to grant Plaintiff a bonus, but whether its failure to do so was based upon discriminatory motives. Plaintiff offers no evidence nor does she submit any arguments that the proffered reason for Defendant's denial of the EVA bonus was pretextual. The Court finds that Plaintiff has not met her burden of creating a genuine issue of material fact in proving pretext and GRANTS summary judgment on the issue of whether Defendant's denial of the EVA bonus was discrimination.

Conclusion

The Court concludes that Plaintiff has not set forth a prima facie case regarding her claims revolving around the detail to Chicago and her duty assignments. Also, Plaintiff has failed to meet her burden establishing that there is a genuine issue of material fact as to whether Defendant's reasons for failing to award her an EVA bonus was pretext for impermissible discrimination. Accordingly, the Court GRANTS Defendant's motion for summary judgment on these three issues.

The only remaining issue before the Court is whether the Defendant impermissibly discriminated against Plaintiff by terminating her (i.e. issuing the notice of removal).

ENTERED this 4 day of March, 2003.

JON P. McCALLA
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT - WESTERN DISTRICT OF TENNESSEE

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